

95TH CONGRESS
1ST SESSION

S. 2117

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 1977

Mr. EASTLAND introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 28 of the United States Code to provide for an exclusive remedy against the United States in suits based upon acts or omissions of United States employees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 1346 (b) of title 28, United States Code, is
4 amended by striking the period at the end of the section
5 and adding the following: “, or where the claim sounding
6 in tort for money damages arises under the Constitution of
7 the United States when such employee of the Government
8 is acting within the scope of his office or employment, or un-

1 der the color thereof, such liability to be determined in
2 accordance with applicable Federal law.”.

3 SEC. 2. Section 2672 of title 28, United States Code,
4 is amended by inserting in the first paragraph the following
5 language after the word “occurred” and before the colon:
6 “, or where the claim sounding in tort for money damages
7 arises under the Constitution of the United States when such
8 employee of the Government is acting within the scope of
9 his office or employment, or under the color thereof, such
10 liability to be determined in accordance with applicable
11 Federal law”.

12 SEC. 3. Section 2674 of title 28, United States Code, is
13 amended by (a) inserting in the first paragraph the follow-
14 ing language after the word “claims” and before the comma:
15 “based upon negligent or wrongful acts or omissions”; and
16 (b) by adding as a third paragraph the following:

17 “The United States shall be liable, respecting the provi-
18 sions of this title relating to tort claims arising under the
19 Constitution of the United States, to the same extent as
20 entitlement to compensation is recognized under the tort law
21 of the place where the violation occurred, but shall not be
22 liable for interest prior to judgment or for punitive damages:
23 *Provided, however,* That for a claim arising under the Con-
24 stitution of the United States, such compensation shall not
25 plus a reasonable attorney's fee and other litigation costs/
be less than liquidated damages of \$1,000, except that for

reasonably incurred,

1 a claim arising from the interception or disclosure of a wire
2 or oral communication ^{as defined in} ~~in violation of~~ chapter 119 of title
3 18, such compensation shall not be less than liquidated
4 damages computed at the rate of \$100 a day for each day
5 of violation or \$1,000 whichever is higher, plus a reason-
6 able attorney's fee and other litigation costs reasonably
7 incurred: ~~That provided further, That without any effect on~~
8 ~~that the United States may not assert as a~~
9 ~~defense to a suit against it alleging a~~
10 ~~Constitutional tort, the absolute or qualified~~
11 ~~complete defense to any claim or suit arising under the~~
12 ~~immunity of the employee (except members of~~
13 ~~the Constitution of the United States, and, notwithstanding the~~
14 ~~Congress, judges or prosecutors or those performing~~
15 ~~existence of such defense, the United States shall, when it~~
16 ~~such functions) or his good faith belief in the~~
17 ~~lawfulness of his conduct.~~
18 ~~within the scope of his office or employment or under color~~
19 ~~thereof, reimburse the person whose constitutional rights~~
20 ~~were violated for the actual or compensatory damages~~
21 ~~sustained."~~

(a)
18 SEC. 4. Section 2675 (a) of title 28, United States Code,
19 is amended by inserting the following language after "em-
20 ployment,": "or upon a claim for money damages arising
21 from the violation of the Constitution of the United States
22 by any employee of the Government while acting within
23 the scope of his office or employment or under the color
24 thereof,".

(b) see rider attached, page 3b

(c) Section 2678 of Title 28, United States Code is amended by inserting at the beginning thereof the words

"Except as otherwise provided by the third paragraph of Section 2674 of this title," and changing the word "No" to "no".

3b

(b) Section 2675(a) of Title 28, is further amended by changing the period at the end of Section 2675(a) to a semicolon and adding the following language --

"Provided, however, that upon a claim for money damages arising from the violation of the Constitution of the United States, class actions in conformity with the requirements of the Federal Rules of Civil Procedure may be instituted provided that the claim presented to the appropriate Federal agency expressly asserts the representative nature of the claim and specifically describes the members of the class, the common interests of the claimant and such members, and the basis upon which the claimant believes he can fairly and adequately protect the interests of the class as their representative."

1 SEC. 5. Section 2679 (b) of title 28, United States Code,
2 is amended to read as follows:

3 “(b) The remedy against the United States provided
4 by sections 1346 (b) and 2672 of this title for claims for
5 injury or loss of property or personal injury or death re-
6 sulting from the negligent or wrongful act or omission of any
7 employee of the Government while acting within the scope
8 of his office or employment or for claims arising from the
9 violation of the Constitution of the United States by any
10 employee of the Government while acting within the scope
11 of his office or employment or while acting under the color
12 thereof, is exclusive of any other civil action or proceeding
13 arising out of or relating to the same subject matter against
14 the employee whose violation or act or omission gave rise to
15 the claim, or against the estate of such employee.”.

16 SEC. 6. Section 2679 (d) of title 28, United States
17 Code, is amended to read as follows:

18 “(d) (1) Upon certification by the Attorney General
19 that the defendant employee was acting within the scope of
20 his office or employment, or in claims arising under the
21 Constitution of the United States that the employee was
22 acting within the scope of his office or employment or under
23 the color thereof, at the time of the incident out of which the
24 suit arose any such civil action or proceeding commenced
25 in a United States district court shall be deemed an action

1 against the United States under the provisions of this title
2 and all references thereto, and the United States shall be
3 substituted as the party defendant. After such substitution
4 the United States shall have available all defenses to which
5 it would have been entitled if the action had originally
6 been commenced against the United States under this chap-
7 ter and section 1346 (b).

8 “(d) (2) Upon certification by the Attorney General
9 that the defendant employee was acting within the scope
10 of his office or employment, or in claims arising under the
11 Constitution of the United States that the employee was
12 acting within the scope of his office or employment or under
13 the color thereof, at the time of the incident out of which
14 the suit arose any such civil action or proceeding commenced
15 in a State court shall be removed, without bond, at any time
16 before trial, by the Attorney General to the district court
17 of the United States of the district and division embracing
18 the place wherein it is pending and be deemed an action
19 brought against the United States under the provisions of
20 this title and all references thereto, and the United States
21 shall be substituted as the party defendant. After such
22 substitution the United States shall have available all
23 defenses to which it would have been entitled if the action
24 had originally been commenced against the United States
25 under this chapter and section 1346 (b). The certification

1 of the Attorney General shall conclusively establish scope
2 of office or employment and in claims arising under the
3 Constitution of the United States, acting under color of
4 office or employment for purposes of such initial removal.
5 Should a district court of the United States determine on a
6 hearing on a motion to remand held before trial on the merits
7 that the employee defendant was not acting within the scope
8 of his office or employment, and in claims arising under
9 the Constitution of the United States, acting within the scope
10 of his office or employment or under color thereof, the
11 case shall be remanded to the State court in which it was
12 initially filed.

13 ~~"(d) (3) - The provisions of this chapter and section~~
14 ~~13-16 (1) - shall not apply in cases where the United States~~
15 ~~has not waived its sovereign immunity under this chapter -~~

16 ³
17 "(d) (A) Where an action or proceeding under this
18 chapter is precluded because of the availability of a remedy
19 through proceedings for compensation or other benefits from
20 the United States as provided by any other law, the action
21 or proceeding shall be dismissed, but in that event the run-
22 ning of any limitation of time for commencing, or filing an
23 application or claim in, such proceeding for compensation or
24 other benefits shall be deemed to have been suspended during
25 the pendency of the civil action or proceeding under this
chapter."

1 Sec. 7. Section 2679 of title 28, United States Code,
2 is amended by adding a new subsection (f) as follows:

3 “(f) Where an action or proceeding under section 1346
4 (b) or 2672 arising under the Constitution of the United
5 States results in a judgment against the United States or an
6 award, compromise, or settlement paid by the United States,
7 the Attorney General shall forward the matter for such
8 further administrative investigation or disciplinary action as
9 may be appropriate to the head of the department or agency
10 by which the employee whose violation or act or omission
11 gave rise to the claims was employed.”.

12 ~~Sec. 8. Section 2680 (h) of title 28, United States~~
13 ~~Code, is amended to read as follows:—~~

14 ~~“(h) Any claim arising out of libel, slander, misrepres-~~
15 ~~entation, deceit, or interference with contract rights.”~~

SEC. 8 (see rider attached, page 7a)

16 Sec. 9. (a) Subsections (a) through (d) of section
17 4116 of title 38, United States Code, are repealed, and
18 subsection (e) of that section is amended by deletion of the
19 designation “(c)”, by deleting the words “person to whom
20 the immunity provisions of this section apply (as described
21 in subsection (a) of this section),” and inserting in lieu
22 thereof the words “employee of the Department of Medicine
23 and Surgery”.

24 (b) Subsections (a) through (c) of section 224 of the
25 Public Health Service Act, as added by section 4 of the Act

7a

"SEC. 8(a). The preamble to Section 2680 of Title 28, United States Code, is amended to read as follows:

"Except for tort claims arising under the Constitution of the United States, the provisions of this chapter and section 1346(b) of this title shall not apply to and the United States shall not substitute itself in —"

(b) Section 2680(h) of Title 28, United States Code, is amended to read as follows:

"(h) Any claim arising out of libel, slander, misrepresentation, deceit, or interference with contract rights."

1 of December 31, 1970, and renumbered (42 U.S.C. 233
2 (a) through (e)), are repealed, and subsection (f) is
3 amended by deletion of the designation "(f)".

4 (c) Subsections (a) through (e) of section 1091 of
5 the Foreign Service Act of 1946, as added by section 119
6 of the Act of July 12, 1976 (22 U.S.C. 817 (a) through
7 (e)) are repealed.

8 (d) Subsections (a) through (e) of section 1089, title
9 10, United States Code, are repealed. Subsection (f) is
10 amended by deleting the words "person described in sub-
11 section (a)" and inserting in lieu thereof the words "em-
12 ployee of the Armed Forces, the Department of Defense, or
13 the Central Intelligence Agency,".

14 (e) Subsections (a) through (e) of section 307 of the
15 National Aeronautics and Space Act of 1958, as added by
16 section 3 of the Act of October 8, 1976 (42 U.S.C. 2458a
17 (a) through (e)), are repealed, and subsection (f) is
18 amended by the deletion of the designation "(f)", by the
19 deletion of the words "person described in subsection (a)"
20 and by the insertion in lieu thereof of the words "employee
21 of the National Aeronautics and Space Administration".

22 SEC. 10. Section 2520, title 18, United States Code,
23 shall not apply to civil causes of action against officers or
24 employees of the United States while acting within the scope

9

1 of their office or employment, or while acting under the color

2 of such office or employment.

SEC. 11. This Act shall apply to all claims

3 ~~SEC. 11. This Act shall apply to all claims and suits~~
and suits pending on the date of enactment or

4 ~~pending on the date of enactment or filed or accruing there-~~
filed or accruing thereafter, provided that as
5 after

to such pending suits where a plaintiff has

demanded a trial by jury prior to enactment or

whose time to file such a demand in a pending

suit has not expired on the date of enactment,

he may elect to retain his right to jury demand

in which event the United States may assert all

defenses otherwise available to its employees,

and the plaintiff would not be entitled to

liquidated damages or reasonable attorneys'

fees as provided by section 3 of this Act.

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